THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No.5999 of 2004

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Dated :29-09-2005

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Between:

S.Triveni.

.. **PETITIONER**

AND

Andhra Mahila Sabha and others.

.. RESPONDENTS

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ORDER:

Questioning the action of the respondents, in seeking to relieve the petitioner from service as a Computer Programmer and for a declaration that the petitioner is eligible to continue in the said post, the present writ petition is filed.

Facts, to the extent necessary for this writ petition, are that the petitioner, who had undergone training as a computer programmer, obtained P.G.Diploma in Computer Programming from the Setwin Institute of

Management and computers. The petitioner submitted her application on 20-07-1998. Pursuant thereto, she was appointed by the first respondent on 27-08-1998. It is her case that since September 1998, she has been working as a computer programmer in the first respondent Institution of which the second respondent is an integral part and that the second respondent is not an independent institution. Petitioner would contend that she is the senior most Computer Programmer, that the School of Infomatics is part and parcel of AMS Arts and Science College for Women and the appointment of the petitioner as a computer programmer was in the Arts and Science College of the respondent. A notice was issued by the Director on 12-02-2004 whereby, the petitioner was informed that 13th of March 2004 was the last late for BCA III year II Semester course, with this the BCA program would come to an end and there was no BCA I year or II year students. The petitioner was informed that her services would no longer be required, and that the respondents were not in a position to transfer her services to some other program. The petitioner was informed that her last date of working would be 31-03-2004 and her entitlement of leave would be calculated accordingly.

This court, by order in W.P.M.P.No.7807 of 2004, dated 29-03-2004, directed the respondents to continue the petitioner on seniority basis subject to availability of work. Several contentions are raised by Sri K.S.Murthy, learned counsel for the petitioner. It would however suffice to take note of the contention that the action of the respondents in terminating the service of the petitioner is in violation of Section 83 of the A.P. Education Act, 1982.

Section 83 of the A.P.Education Act, reads thus:

> "Retrenchment of employees:- Where retrenchment of any employee is rendered necessary by the management or competent authority consequent on any change relating to education or course of instruction or to any other matter, such retrenchment may be, effected with the prior approval of the competent authority or the next higher authority, as the case may be."

A division Bench of this court in ***VASAVI COLLEGE OF ENGINEERING*** v. ***A.SURYANARAYANA*** held that a writ petition would lie against Managements of private educational institutions, which are recognized and governed by the A.P.Education Act, whether or not they are aided. The Division Bench further held that private institutions had a statutory duty to comply with the provisions of the A.P.Education Act and a complaint, alleging violation of the statutory obligations on the part of the managements of private institutions, would certainly lie to this court, which would be competent to enforce such obligations by a mandamus.

The Division Bench in ***VASAVI COLLEGE*** (1 supra) further held thus:

> "In the view which we take that Sections 79 and 83 complement each other and exhaust the entire area of termination of service, punitive or otherwise, it is not necessary for us to consider further refinements sought to be discovered by counsel for the employer that only such retrenchment of employees consequent on 'any change relating to education or course of instruction or to any other matter 'fall within Section 83 of the Act. We are not persuaded to accept the specious argument that any other matter' must be relatable to change relating to education or course of instruction and cannot take in termination of service or any other reason. The natural meaning to be given to the phrase' any other matter'

> seems to us to be exclusive of change relating to education or course of instruction. We are also of the opinion that the two preceding phrases are exhaustive and nothing is left out to be covered by the phrase 'to any other matter' in relation to those two exhaustive categories.
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> We note that the statute makes no difference between a temporary employee and a regular employee. Section 79 of the Act dealing with dismissal, removal or reduction in rank undoubtedly applies to temporary employees as well, except in a case where a person was appointed for a specified term, on the expiry of which, or subject to specific condition, in compliance with which, his services are sought to be terminated. In the present case undeniably, the temporary service of the petitioner which was continued for almost one year after he was found to be unfit to be a professor on 28-07-1984 was sought to be terminated on a second occasion by order dated 06-03-1987 for the only reason that he was not found fit for regular appointment. We have read the order of appointment scrupulously and could not find a condition that the temporary appointment as Assistant Professor was terminable if he was not selected for regular appointment in that post. As a matter of fact, in spite of his non selection on 28-07-1984 on the earlier occasion, he was continued in service till 10-5-1985, that itself indicates that non-selection for regular appointment was not meant to result in an automatic termination of the temporary appointment of the petitioner."

This court extended the requirement of compliance with Section 83 of the Act to temporary employee also. As is clear from the order of appointment dated 27-08-1998, appointment of the petitioner as a Computer Programmer was on a consolidated pay of Rs.2,000/- per month and her appointment was temporary in nature. It is not in dispute that the respondents have not complied with the statutory requirement prescribed under Section 83 of A.P.Education Act.

Sri K.Mahipathy Rao, learned counsel for the respondents, would however refer

to a subsequent judgment of this court in ***C.S.H.N.MURTHY*** v. ***GOVERNMENT OF ANDHRA PRADESH*** and submit that the earlier Division Bench of this court in ***VASAVI COLLEGE*** (1 supra), was considered and that this court held that termination of service of a probationer did not attract either Section 79 or Section 83 of the A.P. Education Act. The petitioner herein is not a probationer. She was appointed on temporary basis in the year 1998 and had served the respondent for six years till her services were sought to be terminated by the impugned proceedings dated 12-02-2004. Since the judgment in ***C.S.H.N.MURTHY (***2 supra) related to a probationer, which the petitioner admittedly was not, the said judgment has no application. In accordance with the law laid down by the Division Bench of this court in ***VASAVI COLLEGE*** (1 supra), the respondents were required to comply with Section 83 of A.P.Education Act before the services of the petitioner was terminated.

Sri K.Mahipathy Rao, learned counsel for the respondents, would however submit that the petitioner has an effective alternative remedy by way of appeal as provided under the Act, without exhausting, which the petitioner has chosen to invoke the extraordinary jurisdiction of this court under Article 226 of the Constitution of India. Learned counsel would submit that, in the absence of the alternative statutory remedy being exhausted, the writ petition ought not to be entertained by this court.

It is well settled that existence of an alternative remedy is not a bar for exercise of jurisdiction under Article 226 of the Constitution of India. This court would normally, relegate a person, who approaches this court invoking the extraordinary jurisdiction under Article 226 of the Constitution of India, to the alternative remedy prescribed under the statute, at the stage of admission of the writ petition. Having admitted the writ petition and having chosen to pass

interim order thereon, I see no reason to relegate the petitioner to alternative remedy prescribed under the Act, more so, when it is not in dispute that the respondents have admittedly violated the statutory provisions prescribed under Section 83 of A.P.Education Act.

Since the order dated 12-02-2004 has, admittedly, been passed without complying with Section 83 of the Act, the impugned order is hereby set aside. This order shall not preclude the respondents from complying with the statutory requirement under Section 83 of the Act, and to take action thereafter in accordance with law.

The writ petition is accordingly disposed of. No order as to costs.

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RAMESH RANGANATHAN, J

Dated: 29-09-2005

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